

Agenda

Item #1



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

Minutes of the March 31, 2011, Meeting of the
Commission on Governmental Ethics and Election Practices
Held at the Commission Office, 45 Memorial Circle,
2nd Floor, Augusta, Maine

Present: Walter F. McKee, Esq., Chair; André G. Duchette, Esq.; Margaret E. Matheson, Esq., Michael T. Healy, Esq. Staff: Executive Director Jonathan Wayne; Counsel, Phyllis Gardiner

At 9:00 a.m., Commissioner McKee convened the meeting.

The Commission considered the following items:

Agenda Item #1. Ratification of Minutes of the January 27, 2011 Meeting

Mr. Healy moved to accept the minutes as drafted. Ms. Matheson seconded.

Motion passed unanimously (5-0).

In consideration of the Commission's practice to address agenda items out of order to accommodate the attendance of public participants regarding particular items, the following agenda item was taken out of order:

Agenda Item #4. Policy Issue Concerning Maine Clean Election Act Program

Seth Berner was a Green-Independent candidate for the State House of Representatives in 2010. He believes that the Maine Republican and Democratic Parties encourage candidates to purchase printed campaign materials from certain vendors, thereby providing the candidates with a financial advantage in their races. He argues that the practice subverts the intent of the Maine Clean Election Act program, which is to maintain an even playing field among candidates in a race.

Seth Berner said he ran as the Green Independent candidate in District 115 against Democratic candidate Stephen Lovejoy and Republican candidate James Martin who did not raise or spend any money at all. He said that Mr. Lovejoy and he ran essentially the same kind of campaign – lawn signs, mailings, door-to-door communications with voters, etc. Mr. Berner said that based on his own experience in paying for mailings during the campaign, Mr. Lovejoy would have had to receive a substantial discount from the printer, Bridge Communications, in order to get the price for the mailings reported in Mr. Lovejoy's campaign finance reports. He said that in addition to the postage costs, which are fixed costs, there are other fees and costs associated with producing the type of communication used by Mr. Lovejoy. Mr. Berner said he believes the price paid by Mr. Lovejoy was less than the prevailing market rate due to a bidding process by the Democratic Party to get the lowest cost possible for combined campaigns of Democratic candidates.

Mr. McKee asked Mr. Berner if it would be a problem if three or four candidates got together to maximize their ability to get the most for their dollar.

Mr. Berner said it would be a problem because the idea behind the Clean Election Act is to level the playing field. He said it is not necessary for candidates to go out of state to save money in order to reach their constituents. He said Maine has printers available to candidates and if all candidates paid the same amount for their communications, it would be fairer and would level the playing field.

Mr. Healy asked if Mr. Lovejoy's printing costs were less than costs for the printer.

Mr. Berner said no, but the costs were less than market costs. He said Bridge Communications offered a price based on a volume purchase which was not available to an individual. He said 107 House candidates bought from this company out of 130 House Democratic candidates.

Mr. Healy asked if the company was charging less due to the large volume, what, if anything, the Commission could do about it.

Mr. Berner said the Commission could outlaw these coordinated campaigns and require elections to be candidate vs. candidate. He said candidates should be required to negotiate with vendors as individuals.

Mr. Healy asked Mr. Berner if he should be addressing the Legislature for a remedy, not the Commission.

Mr. Berner said he believed it was something the Commission should decide because it is an issue about how Clean Election money is spent. He said the purpose of the Act was to level the playing field. He said if a candidate receives a benefit from a party, then the opponent would be able to receive matching funds.

Mr. Duchette asked whether Mr. Berner was asking the Commission to equalize the parties instead of the candidates. He questioned where the regulation would stop if the Commission were to start regulating party activities.

Mr. Berner suggested telling the parties they are allowed to provide logistical support but cannot negotiate a price advantage for their candidates. He said as a result of this low price, Mr. Lovejoy was able during the final week of the campaign to purchase \$1,000 worth of lawn signs and do another mailing. He said this last minute blitz by Mr. Lovejoy made a huge impact on the election result and if he had received matching funds it could have made a difference in his response strategy.

Mr. Healy asked if Mr. Berner had gotten together with other Green Independent candidates to negotiate a lower price for their campaign mailings.

Mr. Berner said they were not interested in playing by improper rules as other candidates were doing. He said five Green Independent candidates could not have equaled the same buying power that over 100 candidates had.

Mr. Healy said the candidates are free to get together to negotiate a lower rate. The Commission cannot tell candidates that they are not free to associate with one another to get the best price available.

Mr. Berner said that was what the Clean Election program was designed to do, to eliminate special rates for some and not others.

Mr. McKee asked Mr. Berner if he had any additional factual information that he wanted to present. He said this issue was in a preliminary stage and that the Commission would look to Commission staff to see what options are available for further consideration of this issue.

Mr. Berner encouraged the Commission to enforce the Clean Election Act concept of leveling the playing field.

David Bright from Dixmont, Maine, said that when a political party coordinates campaign materials with its candidates it is not an independent expenditure. He said that the party is paying for the costs of negotiating the printing rates and the design services for the mailings used by the candidates. These expenses are not independent of the candidates and they are not being reported by the party committee. He suggested that some Clean Election money may be going to the parties to do organizational and consulting work for their candidates' campaigns. He also said the Commission should consider the policy issue about whether Clean Election candidates should be required to spend Clean Election funds in-state rather than use out-of-state vendors. In addition, he said there is an issue of Clean Election candidates not paying Maine sales tax on campaign materials purchased out of state. Candidates are supposed to self-report those non-taxed purchases to the Maine Revenue Service. He said he suspects that candidates are not doing this.

Mr. Wayne explained that issue presented by Mr. Berner is not one within the Commission's power to remedy. Rather, as Mr. Healy pointed out, the matter should be brought before the Legislature, not the Commission. He said that one element of the Act ensures that Clean Election candidates receive additional funds so that they have roughly the same amount of money as their opponents, but the Act never was intended to equalize all MCEA candidates in every aspect of campaigning. He said currently the courts are reviewing whether it is appropriate for a state government to equalize campaign spending and control finances of candidates. He said it appears that Mr. Berner is asking the state of Maine to tell candidates what they have to pay for certain campaign goods and services. He said that is a very strong regulatory step for the state to take. It is outside the intent of the Maine Clean Election Act and outside the Commission's purview.

Mr. Duchette stated that this issue is really more about whether the printing company made a contribution by giving a discount. That was an issue within the Commission's jurisdiction.

Mr. Wayne agreed. He said this matter could be approached in terms of whether a contribution to a candidate was made but Mr. Berner did not choose to bring it forward in that manner. Whether something is or is not a contribution depends on whether it was intended to support or oppose a candidate's election. He said it appears that this was a business decision on the part of Bridge Communications not intended to be a contribution.

Mr. Healy stated what bothered him was it was possible for a printing company to enter into an agreement to provide goods and services to candidates at less than cost and take a loss. The company then would make up that loss by charging for other services to other customers. This would give a large advantage to a group of candidates. He said if Mr. Berner were alleging that, it would be a legitimate complaint but he is not making that allegation. Candidates have the right to negotiate to get the best price possible as long as the vendor does not provide that service for less than cost which would be a contribution.

Mr. McKee moved that the Commission take no further action. Mr. Healy seconded.

Motion passed unanimously (4-0).

Agenda Item #5. 2011 Legislation

Mr. Wayne explained the staff encouraged the Commission to support L.D. 848 which was sponsored by Senator John Patrick. This is a resolve that directs the Commission to study the options for modifying the Maine Clean Election Act if a decision in *McComish v. Bennett* before the U.S. Supreme Court invalidates the matching funds part of the program. He said if changes to the law are required, they would need to be made for the 2012 election as early as possible. The U.S. Supreme Court is expected to issue its decision in June. The Commission would study possible options and report any findings to the VLA Committee by October 15, 2011, and then the VLA Committee would report a bill by December 1, 2011. He said the goal is to establish how the program will operate so that candidates running in 2012 understand the rules which would mean consideration by the Legislature in early 2012.

Mr. Wayne confirmed for Mr. Healy that the resolve does not suggest any substance itself. He said that he envisioned that the Commission would hold one or two public hearings and that the staff would present the

Commission with a proposed report to the VLA Committee. The final report as adopted by the Commission would be presented to the VLA Committee in October.

With regard to the other bills, Mr. Wayne explained that L.D. 1245, An Act to Modify the Responsibilities of the Commission came about from a sense that it would be helpful if the Commission could render an opinion about whether a particular course of action would be compliant with campaign finance. In particular, in the last election, the Maine Democratic Party wanted to know if certain campaign communications it intended to use would constitute express advocacy. In the past, some Commissioners have expressed reluctance about ruling on questions about communications prior to the communication actually being sent to the voters. He said he would encourage some advice from the Commissioners on this issue.

Mr. McKee stated this was a policy issue and impacts the Commission directly. He said the Commission staff provides advice on a regular basis to candidates that many regulatory commissions do not provide. He said he feels the Commission currently goes beyond the call of duty as it is.

Mr. Healy asked if this LD 1245 would make it mandatory for the Commission to give advisory opinions. He said if it were mandatory, he would vote against it.

Ms. Gardiner said the statute reads "the general duties of the commission shall be" and this bill would add an additional duty to the current list. She did not think it meant the Commission would have to consider a request for an advisory opinion in every instance but may have to have a reason for declining to do so.

Mr. McKee stated it would be beneficial to retain the ability to give advisory opinions; however, he would not support being told he had to do it under every circumstance.

Mr. Duchette stated that he could sympathize with the need for advisory guidance because in the practice of administrative law having clear advice from an agency or commission helps to assist clients. However, he would not support the need for advisory opinions on express advocacy. He said people can follow prior examples of communications. Issues arise when the line is pushed a little further than where it was during the previous election.

Mr. McKee said there is already plenty of advice and guidance out there – guidelines, a handbook, Supreme Court cases. These are all ways to find examples for acceptable communications.

Mr. Wayne asked for clarification of the Commission's position. He asked if this were mandatory, the Commission would oppose it. However, if the Commission had the discretion to refuse to provide a request if there was good reason, the Commission would be able to live with it.

Mr. McKee stated he would be completely opposed to L.D. 1245 because it would significantly change everything the Commission currently does.

Regarding L.D. 659 and L.D. 120 which would significantly impact the Clean Election program, Mr. Wayne said the public hearings have been held. The work sessions will be held later and he wondered whether the Commission would want to take a position on either one of these bills.

Mr. Duchette said he felt the Commission should not weigh in one way or another on these two bills. It should be up to the Legislature and the public to decide these kinds of policy issues.

Mr. McKee said he was torn. He said he is a strong supporter of the program; however, he felt this was a policy issue best left to the Legislature.

Mr. Healy agreed but felt there were two separate issues: a policy issue about the program and a fiscal issue about how public money should be spent during times when other programs are being cut.

Mr. Wayne stated he would not take any action on these two bills.

Agenda Item #6. Statutory Proposal by Commission

Mr. Wayne explained that the staff proposes two additional changes to the bill which the Commission already approved. The two changes affect internet and e-mail activities and communications in political campaigns by providing exemptions to the disclosure laws under certain conditions. He further explained that these changes have come about due to the Cutler Files website issue. He said the staff feels that these

exemptions pertain to independent people who voice opinions, free from influence by a candidate or political committee and spending a small amount of their own money. He said the requirements to put a disclaimer on the political communications of these individuals and to file reports may have an impact on their ability to engage in political speech. The arguments for the exemptions are that the state of Maine should not inhibit grassroots discussions of political candidates and issues by ordinary individuals and that the changes would protect Maine's disclaimer statute from attack. Mr. Wayne pointed out the disclaimer statute is currently being challenged by the Maine Civil Liberties Union in the Cutler Files case. He said the argument against the exemptions is that the disclaimers do have a valuable role informing the public who is speaking about candidates and issues and exempting certain communications could lead to a less informed public. Mr. Wayne said that he would not be in favor of broad exemptions as a few other states have adopted. He suggested crafting narrow exemptions and rules that bring the disclaimer statute up to date with new media and that will allow individuals who spend a limited amount of their own funds to speak without being required to comply with the disclaimer and reporting statutes.

Mr. Healy stated for clarity that under this exemption, someone could create a website and remain anonymous unless they were directly affiliated with a candidate.

Mr. Wayne said that would be the case as long as the cost did not exceed \$100.

Ms. Matheson asked whether the proposed exemption in paragraph (6)(C) regarding internet and e-mail activities raised a question about agency. As written, the exemption would apply to a staff member of a candidate's campaign who acted independently and without the authorization of the candidate or campaign.

Mr. Wayne agreed that the exemption could be interpreted that way.

Ms. Gardiner said the exemption could be drafted such that it would not apply to individuals who are affiliated with a campaign. However, the term "affiliated" would also need to be defined.

In response to a question from Mr. Duchette, Ms. Gardiner said that a campaign staff member could put an editorial in the newspaper without the disclaimer because that communication would be covered under the existing media exemption.

Mr. Duchette said that was the issue in the Cutler Files matter - why should a newspaper be exempt but a blog is not exempt.

Mr. Healy expressed his view that if someone was a paid consultant for a political campaign and created a website, or other communication, costing over \$100, they should disclose their name and not be able to hide behind anonymity. He stressed that he would not support an exemption for that scenario.

Ms. Gardiner suggested that concern may be addressed by changing paragraph 6(C) to be clear that the exemption does not apply to an individual who is compensated by any campaign.

Mr. Duchette said there are fewer newspapers and that the trend is that more people are getting news online rather than the traditional newspaper or magazine. He said that whether someone was working for a campaign or not, the online communication should fall under the same exemption that covers editorials or commentaries appearing in newspapers. He said he realized this may be a slippery slope and that some campaigns could put large amounts of money into a website and claim they fall under the exemption.

Ms. Matheson said the cost limit of \$100 would address that.

Mr. McKee said he liked the staff's proposal and appreciated the opinions of other stakeholders on this issue. He said this may not be a perfect solution, however it does provide a balance from all sides and he would support the proposal.

Mr. Healy asked whether the Commission should wait on making a decision on this matter until the results of the Maine Civil Liberties Union lawsuit against the Commission is final.

Ms. Gardiner said the Commission could address some aspects of the issue in this proposal and wait to address other areas after the final decision by the Court is reached. She said MCLU was open to the idea that if legislation was going to be put forward addressing this type of communication, they would consider not following the lawsuit through to the end.

Ms. Gardiner said they were appealing the Commission's decision in the Cutler Files case and adding independent claims to the constitutionality of the statute as applied to the Cutler Files, specifically that the media exemption is not broad enough and that the disclaimer statute does not have a de minimus threshold.

Mr. McKee said he would be open to tinkering with some areas of the proposal to address concerns, but he recommended going forward with this staff's recommendation.

Mr. Wayne explained that the bill has not been printed and has not come back from the Revisor for review. He said the Revisor's Office may be open to allowing for a few changes during the red line review and then it would go to public hearing. Mr. Wayne also asked for clarification as to whether the Commission wanted the staff to make a change to paragraph 6(C) to include Mr. Healy's suggestion that the exemption would not apply to an individual who is compensated by a campaign or has some other direct connection with a campaign.

Mr. McKee said the staff should make that change.

Agenda Item #7. Commission Rule-Making

The Commission staff recommends that the Commission initiate a rule-making to address topics of contributions, coordinated expenditures, the definition of express advocacy, and the schedule for filing independent expenditure reports. If the Commission agrees, the staff will distribute an invitation to comment and will investigate whether it is possible to hold a public hearing at the April 26 meeting. It may not be possible due to the requirement to publish a notice in newspapers 17-24 days before the public hearing.

Mr. McKee moved that the Commission propose the rule changes as recommended by the staff and hold a public hearing at the April meeting or the May meeting, if necessary. Mr. Healy seconded.

Motion passed unanimously (4-0).

Agenda Item #8. Report from Commission Auditor

The Commission's auditor completed the audit of Sen. Richard Rosen's 2010 campaign. No exceptions (violations) were found.

Mr. McKee recused himself and left the meeting. The Commission resumed the scheduled order of agenda items at this point.

Agenda Item #2. Maine Clean Election Act Expenditure – 2010 Candidate Patricia R. Jones

Mr. Wayne said that at issue in this matter is what constitutes acceptable expenditures under the Maine Clean Election Act. He said the Act requires candidates to spend funds for campaign-related purposes only and directs the Commission to establish guidelines on what is and is not acceptable expenditures. He said the staff does not recommend penalizing Ms. Jones in any way or find her in any violation. He said Ms. Jones called the staff for advice on this air fare expenditure for her son and received incorrect information from a former employee. He explained that had the employee come to seek further advice from him or Assistant Director Paul Lavin, they would not have recommended this expenditure. Mr. Wayne said moving forward Maine Clean Election Act candidates will not be allowed to use public funds for air fare.

Mr. Wayne said the staff recommends Ms. Jones repay the amount of the air fare to the Fund.

Mr. Healy asked, for clarification, if the ticket had been purchased before asking for the advice.

Mr. Wayne confirmed this and reviewed the chronology of events. He said the roundtrip ticket was purchased on October 7 with Ms. Jones' personal funds, the travel commenced on October 31, her son worked on the campaign for four days, and he left after the election. Ms. Jones called the Commission in December to ask for advice whether she could use her remaining Clean Election funds to pay for the air fare.

Patricia Jones of Mount Vernon introduced her campaign treasurer, Warren Bartlett. She arranged for her son to fly home during the last week of her campaign to help her with final activities. She said near the end of the reporting period in December she called the Commission to see if she could use the remaining balance of her matching funds to pay for the air line ticket she purchased in October for her son. She said

the staff person asked if her son was working on the campaign and she said yes. The staff person approved the expenditure. She said when she told Warren about her phone call and that it was approved, he said he would call also to verify this was acceptable. Warren got the approval also and was told to list the expenditure under Other Expenses. In January, the Commission staff wrote to her and asked her to list the times her son worked for her and she did so. She said on March 4 she received a letter from the Commission stating she had been wrongly informed about this expenditure and she owed the Clean Election fund the cost of the ticket. She said she has been very upfront and accountable about this expenditure. She explained she had managed five campaigns over the last six years and each time Clean Election funds were used. She said she has been very careful and accountable with these funds and never had a complaint. She said she is a strong supporter of this program and proud to live in a state where anyone can run for office no matter what their income. She said she finds it difficult to be asked to pay this expense so long after the reporting and after she was told it was acceptable by staff. She expressed concern that in the future other candidates may not be able to rely on advice from Commission staff. She requested the Commission acknowledge she was advised by staff this was acceptable and that the expense was properly reported.

Mr. Healy asked when her son returned to his home.

Ms. Jones said he flew back on November 3.

Mr. Duchette asked how old her son was and how often her son traveled home.

Ms. Jones said he is 43 and tries to get back twice a year, once in the summer and at Christmas.

Warren Bartlett said this staff member was always very helpful and knowledgeable. He explained that he looked through the guidelines when he was filing Ms. Jones' last report and was puzzled as to how this expenditure this should be reported and the staff person told him to file it under "Other." He also had questions regarding the dates of the purchase and tried to be very upfront about the timing of the expenditure as well.

Mr. Healy stated that there was no question that every attempt was made to comply with the law and file correctly.

Mr. Healy said the statute states that funds can be spent for campaign-related purposes only and the guidelines say expenditures for campaign-related purposes are those that are traditionally accepted as necessary to promote the candidate. He said that following the language in the statute this was a campaign-related purpose. However, under the “traditionally accepted” standard in the guidelines, he was not as certain that the expenditure was necessary to promote the election of the candidate. He said he saw the Act and the guidelines establishing two different tests and he asked which test should apply.

Mr. Wayne said Ms. Jones makes a very good argument for considering the expenditure campaign-related since it appears her son was only here for the last few days of the election. Mr. Wayne said that the guidelines establishing the “traditionally accepted” standard were developed prior to his tenure. He said past Commissioners and staff have developed policies on expenditures to reassure the public that public campaign funds will not be used for personal expenses even if they may have some relationship to a campaign.

Mr. Duchette said that area was unclear for him as well because determining what is traditionally campaign-related may not always be easy. Something that was not traditional five years ago may be considered acceptable today. He said he was uncomfortable applying a “traditional” standard in this case. He said the facts in this case show that the expenditure was allowable because it had a campaign-related purpose. He would not support a repayment to the fund.

Mr. Healy said the “campaign-related purpose” standard in the statute is the appropriate standard to use and under that standard the expenditure was proper. The statute does not say “necessary” campaign-related purpose. He said the facts show it was campaign-related. It was not a vacation. He said for future purposes, the standard needs to be clear. He views the guidelines as advisory and the statute is controlling in this case. Ms. Jones should not have to reimburse the fund for the expenditure.

Ms. Gardiner agreed the statute controls; however, the Act requires the Commission to provide guidelines to candidates as to what constitutes permissible campaign-related expenditures. The guidelines are easier

to change than statutes in order to keep up with campaign practices. She said guidelines are in place to set parameters for what candidates can reasonably claim to be campaign-related expenditures without placing too many restrictions on how candidates can run their campaigns.

Ms. Matheson said she was not completely convinced that the expenditure was a permissible campaign-related expenditure under the guidelines; however, she said in this case the candidate and treasurer have tried to comply and relied on staff advice.

Ann Luther, of Trenton, spoke as an interested citizen and not as a representative of the Maine Citizens for Clean Elections. She said there should be no inference that Ms. Jones' campaign engaged in any wrongdoing simply because she was asked to repay the campaign funds spent on the plane ticket. A repayment only restores what would have been the right course of action to begin with, if that is how the Commission decides. However, some questions arose in her mind that she thought may be relevant to the Commission as it considers this matter. She said if the expenditure was committed before getting the advice of the Commission, did Ms. Jones believe it would be reimbursable as a campaign-related expenditure when she purchased the ticket or did she decide to ask about it when she discovered she had a remaining balance left over? If Ms. Jones had paid the expense out of personal funds, would that have been a contribution to her campaign or simply a personal expense?

Mr. Healy asked whether Ms. Luther thought this law was too broad and she agreed.

Joseph Greenier, concerned citizen from Stockton Springs, said a case came before the Commission a few years ago regarding a candidate wishing to make an expenditure for a band at a campaign-related event. He said the Commission at that time decided it was permissible. He said when advice is given from the staff it should stand.

Ms. Matheson asked Ms. Jones what the balance was in her funding prior to this expenditure.

Mr. Bartlett said there was \$13 in addition to the \$395.

Ms. Matheson asked when the candidate decided to seek reimbursement.

Mr. Bartlett said it was early in December while filling out the final report.

Mr. Wayne said staff would support the Commission's decision not to seek repayment.

Ms. Matheson said she would support a motion that stated because of the facts in this case, that the Commission not seek repayment.

Mr. Duchette moved that the Commission find the expenditure was campaign related. Mr. Healy seconded.

Motion passed unanimously (3-0).

Agenda Item #3. Request for Waiver of Late-Filing Penalty/Patricia R. Jones

On December 9, 2010, former State Representative Patricia R. Jones registered as a lobbyist for the Maine Dental Hygienists Association. She was required to file her first monthly lobbyist report on January 18, 2011. She filed the report two days late. The preliminary penalty is \$100. Ms. Jones requests a waiver of the penalty because she is new to filing lobbyist reports and had difficulties accessing the electronic reports on-line.

Ms. Jones said she had difficulty with her computer at that time and once she did have access, she had difficulty understanding how to do it. She contacted the staff to received help and got it filed soon after that.

Ms. Healy asked when she made an effort to find out when the first report was due.

Ms. Jones said it was in the Lobbyist Handbook and she did know she was required to file but cannot remember what was going on at the time. She contacted staff as soon as she realized she was not going to be able to file the report herself.

Mr. Healy asked how many years Ms. Jones served in the Legislature.

Ms. Jones said she served three years over two sessions.

Mr. Healy confirmed that as a Legislator, Ms. Jones was aware that lobbyist must file reports with the Commission and she agreed.

Mr. Duchette said there are many of these requests that come before the Commission and most always it is a result of waiting until the last minute to file the report.

Ms. Matheson confirmed with Mr. Wayne that staff does a reminder e-mail a week or so before the filing deadline.

Mr. Wayne said it is not required by statute to send out reminders, but there are reminders sent as standard practice. He said a reminder was sent on January 7.

Mr. Duchette asked if Ms. Jones could recall when she first made an attempt to report online.

Ms. Jones said she believed around the 18th and she was having difficulty so realized she was not going to be able to file it without assistance.

Mr. Healy moved to deny the request for waiver. Mr. Duchette seconded.

Motion passed unanimously (3-0).

Mr. Duchette moved to adjourn. Mr. Healy seconded. The motion passed unanimously (3-0).

Meeting adjourned at 11:15 a.m.

Respectfully submitted,

Jonathan Wayne, Executive Director



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

Minutes of the April 26, 2011, Meeting of the
Commission on Governmental Ethics and Election Practices
Held at the Commission Office, 45 Memorial Circle,
Augusta, Maine

Present: Walter F. McKee, Esq., Chair; André G. Duchette, Esq.; Hon. Edward M. Youngblood; Margaret E. Matheson, Esq., Michael T. Healy, Esq. Staff: Executive Director Jonathan Wayne; Phyllis Gardiner, Counsel.

At 9:00 a.m., Chair Walter McKee convened the meeting.

The Commission considered the following items:

Agenda Item #1. Ratification of Minutes of the February 17, 2011 Meetings

Ms. Matheson moved to accept the meeting minutes as drafted. Mr. Duchette seconded.
Motion passed unanimously (5-0).

Agenda Item #2. Public Hearing on Proposed Amendments to the Commission Rules

At the March meeting of the Commission, the members agreed to accept public comment on proposed amendments to the Commission's rules drafted by staff. On April 6, 2011, the Commission mailed a memo to interested persons inviting them to comment. The Commission held a public hearing to receive comments from the public. Interested persons may comment in writing until 5:00 p.m. on Friday, May 6, 2011.

Mr. McKee opened the public hearing for comment.

Ann Luther, co-chair of Maine Citizens for Clean Elections (MCCE), said overall they were in support of the proposed changes. She said they had some questions regarding the proposed rule on coordination. She said they support the effort to create greater clarity regarding what does and does not constitute coordination between candidates and independent spenders. They believe coordination has been

interpreted too narrowly in the past and, as a result, candidates may have felt more constrained in what they can do with their party and supporters.

The proposed changes to the rules provide an exception to the coordination presumption for hand painted or lettered signs that cost \$100 or less. They did not understand why there was a dollar threshold on that exception to the presumption.

The other exception they had a question about is the one that applies to an individual who advised a candidate in a volunteer capacity in the year prior to making the expenditure. An expenditure by that individual will be presumed to be coordinated with the candidate. However, there is another section of the proposed rule in which it appears that the same scenario would not be considered coordination.

Ms. Luther said that the section that allows a candidate to tell a PAC or party committee or other spender not to make an independent expenditure is written in such a way that leaves room for some coordination to occur. They believed the rule could be improved by making it clear that it would not be coordination if a candidate were to make a blanket statement to potential spenders not to make any independent expenditures on the candidate's behalf.

Regarding the other proposed rule changes, MCCE thought the changes were important and well done.

At this point, having no other requests to comment, Mr. McKee closed the public hearing portion for rule-making and said written comments may be received until 5:00 p.m., on Friday, May 6.

Agenda Item #3. Complaint against Maine Republican Party/Late Independent Expenditure Report

On Thursday, February 24, 2011, the Maine Republican Party filed an independent expenditure report for a mailing in support of the Republican candidate in the March 1 special election for House District 11. The report was apparently filed one day late. The routine penalty for the late filing was \$24.69. The Maine Democratic Party filed a complaint urging the Commission to assess an additional penalty under 21-A M.R.S.A. § 1127(1) because the late report delayed payment of matching funds to the Democratic nominee by one day.

Mary Erin Casale, executive director for the Maine Democratic Party, said this late filing occurred during a critical time (six days) before a special election. She said the election was in a rural district and it is difficult to make expenditures without a great deal of forethought and time to plan ahead. Placing an ad in a weekly newspaper requires planning ahead by several days. She said another concern was the amount of money which was delayed, nearly \$2,500, which is a large amount in a House race in a rural district. She said this late filed report appears to follow a similar pattern of other late filed reports by the Republican Party in which the report is filed on the day before a weekend when the opponent will have a more difficult time making arrangements to use the matching funds. This has a very damaging impact on the candidate and on how the Clean Elections program works. She said the Maine GOP clearly knows the rules and has a long history of filing reports. In a general election, when there are 151 House races and 35 Senate races, an oversight such as this may be more understandable. However, there was only this one race that the Republican and Democratic Parties were involved in at the time of the special election. The fact that the Republican Party used a volunteer to act as a liaison in the special election does not relieve the Party of the responsibility to file timely reports. The delay negatively affected the Democratic candidate's ability to receive and spend matching funds, which is a violation of the Maine Clean Election Act. She said penalties assessed should be significant enough to deter all parties from filing reports late and to encourage compliance.

Mr. McKee asked how the delay in funding impacted the candidate with regard to how she would have used the money if she received it earlier.

Ms. Casale said the candidate did not provide that information.

In response to a question from Mr. Healy, Ms. Casale responded that the candidate did spend some of the matching funds but not all of it.

William Logan, Esq., counsel for the Maine Republican Party, said the party does not dispute that the report was filed one day late and has already paid the preliminary penalty. The party currently has a limited staff during this time of year which is different than during a regular election cycle. The party only had two employees, the executive director and the receptionist. In this case, a volunteer jumped the gun and authorized this expenditure to the vendor absent any authority from the party. In fact, the party had not

even made the decision to make the expenditure. The executive director discovered the error two days later when she contacted the vendor to actually place the order. At that point, she filed the report immediately and put the correct dates on the form. Mr. Logan said the Commission should review past practice with regard to this type of error. He referred to a case during a 2009 special election in Farmington in which the Maine Democratic Party was fined \$250. He said the two cases were very similar but there were some differences. The Commission determined that the late filing in 2009 was the result of an internal error at the Democratic Party office, as it was in this case. He said in this case the expenditure was higher than the expenditure in 2009. However, the report was filed one day late as opposed to four days late in the 2009 case. The Maine Democratic Party had already received a significant late filing penalty in the 2008 general election, while the Maine Republican Party has not filed a report late in this election cycle. He said the delay was only one day and the candidate had an opportunity to use the funds to her benefit but chose not to use them entirely.

Mr. McKee asked how close to the election the delay was for the 2009 special election case.

Mr. Logan said he believed it was thirteen days prior to the election.

Mr. McKee said the timing in this case was much closer to the election and just before a weekend when business could not be done until the following Monday.

Mr. Logan said the Commission's practice, historically, has not been to be punitive but more to ensure that everyone follows the rules. This late filing on the part of the Maine Republican Party is an isolated incident.

Mr. McKee said that Ms. Casale had a valid point when she said that this was the only candidate the GOP had to monitor and there were no other matters going on at the time. He asked Mr. Logan whether the party should have had a heightened level of awareness of what was going on in that race.

Mr. Logan explained that normally there would be experienced staff during the regular election cycle to make sure that the proper procedures were followed. However during this non-election period, the

executive director and one other person are the only people in the office so it was difficult to follow the normal internal procedures that are in place in a regular election.

Ms. Matheson asked when the funds were actually available to the candidate.

Mr. Wayne confirmed that she received the funds on Thursday and had access to them by Friday.

Mr. McKee said it would have been most helpful to have the candidate present to get more detailed information regarding this matter and asked for more information from staff regarding the amount of money spent and what it was spent on in order to make a final determination.

In the interest of conserving time, the meeting moved on to the next agenda item while additional information was gathered by Commission staff.

Agenda Item #4. Audit of 2010 Campaign of Joseph C. Palmieri

Agenda Item #5. Request for Waiver of Late Filing Penalties/Joseph Palmieri

The Commission staff audited the 2010 Senate campaign of Joseph C. Palmieri, who participated in the Maine Clean Election Act (MCEA) program. The Commission's final audit report concluded that there were four findings of violation. In the seed money report filed on June 4, 2010, the candidate reported expenditures which had not been made, which resulted in an overpayment of \$857.99 in MCEA funds. In addition, the campaign apparently did not return all unspent MCEA funds after the election. The candidate has responded that the campaign had no intention of filing an inaccurate report and that any mistakes were due to inexperience and personal obligations of the candidate. Mr. Wayne explained that the Commission was hopeful to finally get a full, more detailed explanation from Mr. Palmieri as to the final results of the audit report findings.

Vincent Dinan, staff auditor, explained the findings more thoroughly. He said the first finding was false reporting on the seed money report. He said the audit process looks at the amount of contributions and the amount of expenditures. Mr. Palmieri reported \$1,030 of contributions and \$851.39 of expenditures. He said as a result of reviewing the campaign bank account, he saw that \$1,055 went into the account (\$25 more than the contributions reported on the seed money report) and there was only a single disbursement

for purchase of bank checks which was not reported at all. He said because there was only one expenditure actually made and not multiple expenditures totaling \$851.39, the Commission actually ended up over paying the candidate based upon the seed money report he filed. He said the second finding was reporting expenditures that did not occur during the qualifying period and three of those had no supporting documentation at all. The other expenditures listed in the seed money report were actually paid after the candidate was certified and finding #3 addresses that issue. He said there were five expenditures that were made during the qualifying period and then paid for later from Clean Election funds, which is prohibited. Finding #4, he explained, was the failure to return Clean Election funds at the end of the election cycle. He said on December 31, the bank statement indicated that the remaining balance in the campaign account was \$1,450.33. On January 3, after Candidate Registrar Sandy Thompson told Mr. Palmieri that he needed to return all the funds, he returned \$641.74, which was the amount of the cash balance reported in the 42-Day Post-General Report. It was not the entire balance in the campaign account. As of today, there is still a balance in the account of \$808.59 which has not been returned to the Commission.

William Logan, Esq., said he was assisting Mr. Palmieri in the audit but he was representing him with respect to the request for a waiver of the late filing penalty. He said with regard to finding #1, the overpayment of Clean Election funds resulted from Mr. Palmieri's reporting obligations he incurred during the seed money period on the wrong portion of the report. He said these obligations should have been reported on Schedule D as debts, they were not fabricated or false expenditures. He said Mr. Palmieri was a first-time candidate and was inexperienced as was his treasurer. He said that even though this mistake resulted in Mr. Palmieri receiving more MCEA funds than he should have, ultimately he did not spend more than he should have if the seed money report had been filled out correctly. He also said this did not trigger any matching funds for his opponent. Thus, this clerical error did not cause any harm to the public. Mr. Logan said regarding the failure to return the funds, Mr. Palmieri returned the cash balance as reported on his final 42-Day Post-General Report. He said Mr. Palmieri does intend to return all the funds today but wanted to be sure the process ran its course. He said that Mr. Palmieri was concerned that by returning the entire bank balance he may trigger another reporting violation.

Joseph Palmieri said this was a new process for him. He said he never intended to try to take anything that was not his or knowingly file a false report or lie to the Commission, his opponent or his family. He said he relied on friends to help him out because he was new at running a campaign. His deputy treasurer was a

close friend and she filed all the reports. He said his treasurer had nothing to do with the filings. He said there was never an intention to deceive anyone. He said the money in the checkbook was left there because he thought it might trigger another late report but in hindsight he said he should have sent it all back. He said there was never any intent to use it for anything other than what it was intended.

Mr. McKee said the Commission has to come to a decision today and it is helpful for the Commission and the candidate to have as much information prior to the meeting. He said that the information that Mr. Palmieri provided at the meeting was requested months ago by staff. He said another issue was the money not being returned to the Commission long after notice was given to return the funds. He said Mr. Palmieri did not respond to the staff's requests for several months and that lack of communication was cause for major concern. The severity of the issues is not mitigated by Mr. Palmieri's willingness to write a check out today for the remaining balance in the campaign account.

In response to a question from Mr. Healy, Mr. Palmieri said he became a replacement candidate in April before the primary.

In response to questions from Mr. Healy, Mr. Palmieri said he was a television reporter for approximately 25 years and currently owns a restaurant and does a sports radio broadcast in Portland. He explained he had no background in politics. He had no help with the clerical aspects of his campaign so he asked friends to help him out. He said he wrote all the checks but he did not review the reports or the invoices that came in. He said his deputy treasurer did all that. Mr. Palmieri could not say for certain when the reporting errors came to his attention.

Mr. Healy asked Mr. Palmieri if there was anything from a factual point of view in Mr. Dinan's report with which he disagreed. Mr. Palmieri said he did not.

Mr. Healy asked Mr. Palmieri if the funds in the campaign account had ever been drawn out and then replaced. Mr. Palmieri said they had not.

Mr. Duchette asked if the amount in the account was \$808.59 and Mr. Palmieri explained that the actual balance was \$858.59 because there was a \$50 deposit required when opening the account.

Mr. Dinan confirmed that the Commission's request was for the \$808.59.

Mr. Healy referred to the expenditure reported on the seed money report and asked for clarification whether the expenditures listed were actually made at the time they were reported to be made.

Mr. Dinan explained that there were no disbursements from the campaign account during the period covered in the report.

Mr. Healy confirmed with Mr. Palmieri that the deputy treasurer actually filled out and filed this report.

Mr. Palmieri confirmed that and said he did not see the report before it was filed.

Mr. Healy requested that Mr. Palmieri confirm that these expenditures were not made as the report shows.

Mr. Palmieri said they were not.

Mr. Logan said there was no disbursement made but the obligation had been incurred and should have been reported as a debt on another schedule on the report at that time and then reported as a payment on a later report.

Mr. Wayne said the instructions on the data entry page for Schedule B for expenditures clearly states, "Only enter expenditures that have actually been paid." He explained that the Guidebook also explains that any unspent seed money will be deducted from the first payment of Clean Election funds and that obligations incurred do not count as expenditures for the purposes of calculating the amount of the initial distribution.

Mr. Duchette said because these expenditures were listed on Schedule B, Expenditures, and not listed on Schedule D, Debts, Mr. Palmieri received more funds than he should have.

Mr. Dinan said there was no disbursement of \$520 for Creative Imaging Group.

Mr. Palmieri stated he has checked and every bill from Creative Imaging has been paid.

Mr. Dinan said every invoice and disbursement from the bank account has been tracked and there was no disbursement made in the amount of \$520 to Creative Imaging. He said he had only seen that particular invoice just prior to the meeting. Mr. Palmieri had never produced that invoice even though Mr. Dinan had made several requests for it beginning in January. Mr. Dinan said the disbursement in that amount was never made.

Mr. Palmieri said there was a check written in July for \$1,746 which he believed covered that \$520 invoice.

Mr. Dinan said each invoice from Creative Imaging was matched to a disbursement from the campaign account. He said there was an invoice for \$1,746 and there was a corresponding payment in that amount. He said he cannot tell from an invoice whether it dates back to the qualifying period or if it related in any way to the \$520 invoice produced before the meeting, but the \$1,746 was paid after the qualifying period ended.

Mr. Healy asked Mr. Palmieri if he handled the account with Creative Imaging.

Mr. Palmieri said that he wrote the checks but did not place the orders.

In response to a question from Mr. Healy, Mr. Palmieri said that campaign staff placed the orders.

Mr. Healy asked if the deputy treasurer made the order. Mr. Palmieri said no.

Regarding the payment to Anthony Foster, the \$250 amount was reported as an expenditure on May 25, 2010, but there was no corresponding payment from the campaign account. Mr. Dinan said that the invoice for the \$250 charge was not produced until just before the meeting. There was an invoice for \$300 dated June 1, 2010 from Mr. Foster and a corresponding payment from the campaign account on July 8, 2010 for that amount. There was only one disbursement for \$300 to Mr. Foster from the campaign account. From those facts, it would appear that Mr. Palmieri used MCEA funds to pay for goods and services received in the qualifying period.

Mr. Wayne asked Mr. Palmieri whether he had received any services from Mr. Foster by the time the report was filed on June 4, 2010.

Mr. Palmieri said they had talked about the website but it had not been up and running. He said that he does not think that it was up at the time the report was filed.

Mr. Wayne asked him what the basis was for reporting the \$250 expenditure in the seed money report. He said the campaign's deputy treasurer must have gotten the amount from someone or from something in order to put it into the report.

Mr. Palmieri said that his mindset was that when he got a bill, he just wanted to pay it.

Mr. Wayne said that Mr. Palmieri reported an expenditure to Creative Imaging on May 25, 2010 in the amount of \$520. He said that there was no separate payment in that amount made from the campaign account.

Mr. Palmieri said he believed that payment was lumped in with another payment to Creative Imaging for palm cards and signs.

Mr. Wayne explained that the payment of \$1,718 that the campaign made in July was for lawn signs and stakes. There was a Creative Imaging invoice for 10,000 palm cards that were delivered in June, but that invoice was for \$795. He asked Mr. Palmieri what the basis was for reporting a \$520 payment to Creative Imaging in the seed money report. He also asked Mr. Palmieri when he received the invoice for \$520 that he brought to the meeting.

Mr. Palmieri said he just received it in the last few days after requesting it from his staff.

In reference to the Creative Imaging expenditure for \$520 listed on the seed money report, Mr. Healy asked what basis the deputy treasurer had for typing that into the report when it had not been paid.

Mr. Palmieri said he assumed that the campaign received the information about the amount of the invoice and so she included it in the report.

Mr. Healy asked Mr. Palmieri if he had asked the deputy treasurer why she reported it and he said he had not asked her that. He said the only conversation he had was whether she had the information she needed and whether the report was filed on time.

Mr. Logan stated that it was not unusual to receive an invoice for a service with a different amount than you expected. He said the campaign staff indicated that there was a bill paid for signs and palm cards. Mr. Palmieri believes only one order was placed. It was possible that the final amount was higher than originally expected.

Mr. Palmieri said in his restaurant business when he orders items, he does not pay for the item until he has received it. He does not pay for goods before he receives them. He said he should have been aware of the difference in running a campaign but he was not.

Mr. McKee said that a candidate can gain an advantage by reporting that all the seed money was spent, even if it was not, because that way the candidate will receive the full amount of the distribution. It may have been that in the end no real advantage was realized because the candidate did not spend more than he or she was allowed to spend, if the report was completed correctly. But that is not the issue here.

Mr. Palmieri said there was no intent to deceive any one or get money that was not his.

Mr. McKee explained that procedurally, the Commission had to make a finding before an assessment can be made.

Mr. Wayne explained there was no dispute as to whether the reports were late; however, Mr. Palmieri has asked for a waiver of the penalty amounts.

Mr. Healy asked whether Mr. Palmieri disputed any of the audit findings.

Mr. Palmieri confirmed that he did not dispute any of the four findings.

Mr. Healy said assuming the Clean Election funds are returned by Mr. Palmieri today, he would not assess a penalty for that and suggested increasing the penalty amount on findings 1 and 2 each by \$250.

Mr. McKee said the staff requested the return of funds back in January on a few occasions and still it was not returned.

In response to a question from Mr. Healy, Mr. Wayne confirmed that mid December was the statutory deadline and Mr. Palmieri was reminded several times about the deadline. There were also several subsequent communications with Mr. Palmieri, reminding him that he was late in returning the funds.

Mr. Healy asked if the Commission's past practice was to assess a penalty for the late return and Mr. Wayne said there have been a few instances where a penalty was assessed.

Mr. Healy withdrew his suggestion not to penalize for the late return of funds.

In response to Ms. Matheson, Mr. Wayne said around January 3, 2011 Mr. Palmieri returned the amount on his final report (\$641.74) which was incorrect and not the total amount of unspent funds.

Mr. McKee moved that the Commission find Mr. Palmieri in violation of the Maine Clean Election Act with the specific violations being those listed in the audit findings #1 through #4 in the audit report and that the Commission find that Mr. Palmieri's 11-Day Pre-General and 42-Day Post-General Reports were filed late. The specific audit findings were:

- #1 – Filing a seed money campaign finance report that substantially misreported expenditures
- #2 – Making material false statements (reported expenditures) in the seed money report
- #3 – Spending MCEA funds on goods or services received prior to certification
- #4 – Failing to return all unspent campaign funds

Ms. Matheson seconded.

Mr. Duchette said he was troubled by the overlap of findings 1 and 2 because these seem to be the same thing, misreporting and making false statements.

Mr. McKee said the Creative Imaging invoice provided by Mr. Palmieri before the meeting should have been brought forward in time for review by the auditor in order to have any impact on the decision, adding the information about that invoice came out of nowhere. He said that he could not find anything to support the proposition that a payment was made on that invoice.

Mr. Wayne said that the same facts give rise to a couple of violations. Finding #1 was a failure to accurately report the seed money contributions and expenditures. He said finding #2 was that Mr. Palmieri actually made false statements in the report by stating that he made the payments when he had not.

Mr. Healy said making false material statements is troubling for him because Mr. Palmieri did not actually fill out the form and file it. His vice treasure did.

Mr. Youngblood said these two findings are exactly the same; you cannot have one without the other and appears to be a double penalty for one violation.

Motion passed unanimously (5-0)

Mr. McKee said the penalty amount could reflect the fact that findings #1 and #2 are based on the same facts and perhaps that penalty amount could be reduced. However, he noted the staff has already recommended a significant reduction in the late reporting violations.

Mr. Healy said Mr. Palmieri was a first-time replacement candidate and these penalty amounts are quite significant under those circumstances. He said he was very bothered by the false material statements and the invoice for Creative Imaging. However, \$2,000 was a very significant penalty. He said he would allocate the fines differently. He said it would be worth the effort to go through the facts and findings and reallocate the penalties.

Mr. McKee agreed it was a stiff penalty for a replacement candidate; however, the material false statements are troubling. He said Mr. Palmieri's reluctance to return the unspent Clean Election Act funds and the lack of communication was disappointing also, especially after multiple warnings from staff. He agreed with Mr. Healy that it would be worthwhile to go through the penalty amounts and reallocate them. They are significant penalties but they are merited. The penalties for the late filed reports have been significantly reduced, partially in recognition of the penalties based on the audit. He noted the excellent work by the Commission's auditor, Mr. Dinan. He agreed that if an audit had not been done, most likely these issues would not have been discovered.

Mr. Duchette said there was a significant difference between the original financial report for the 11-Day Pre-General Report filed on October 22 and the amended report filed in December.

Mr. McKee agreed and said the difference was over \$7,000 in expenditures that were not reported in the correct report. He said that was very misleading to the public and the penalty amount was quite small in comparison to the amount underreported. He said the 42-Day Post-General Report was late as well.

Mr. Healy moved that the Commission adopt the staff recommended penalties for the four audit findings and the late campaign finance reports as laid out in Mr. Wayne's enforcement letter. Mr. McKee seconded.

Mr. Youngblood said while these are serious issues, this total amount of the penalties is excessive when compared to fines assessed in the past. Mr. Youngblood said findings #1 and #2 are repetitive and could be considered one violation. Substantial misreporting is essentially the same as making false statements.

Mr. Healy said he would agree with Mr. Youngblood if this were a clerical error; however, in this case the statements made were not clerical.

Mr. Duchette agreed with Mr. Youngblood that this was a substantial penalty. However, there were so many serious violations in this case. He said significant reductions had already been made in several penalties. He suggested a reduction of \$250 in audit finding #2, so the total of the penalties related to the audit findings would be \$1,750. He said these penalties individually taken are relatively small based on

what has been assessed in the past. However, this case presents six separate and different violations and he feels constrained to reduce the penalties any more than that for that reason.

Mr. Healy asked Mr. Duchette about reducing finding #4 and Mr. Duchette said he was most troubled by finding #4 than by finding #2. He said he found Mr. Palmieri's testimony regarding the misunderstanding about how to report unpaid debts credible. He said letting the funds sit in his campaign account for so long after being reminded by staff was very troubling.

Mr. Healy amended his motion to reduce the penalty for finding #2 to \$250. The amended motion is that the Commission adopt the staff's recommended penalties for audit findings #1, #3, and #4; assess a penalty of \$250 for audit finding #2; and adopt the staff's recommended penalties for the late filed reports. Mr. McKee seconded.

Motion passed unanimously (5-0).

Mr. McKee moved that the Commission direct the candidate to repay \$925.72 to the Maine Clean Election Fund. Mr. Duchette seconded.

Motion passed unanimously (5-0).

At this point the Commission resumed discussion of Agenda Item #3, having received the additional material provided by staff.

Agenda Item #3, Complaint against Maine Republican Party (continued from page 5)

Mr. Wayne reported that the matching funds disbursed to the Democratic candidate were mostly unused. He said that on Thursday, February 24, the staff authorized matching funds in the amount of \$2,468. He said the candidate spent just under \$400 on Monday, February 28, to print postcards but it appears she did not purchase a mailing.

Mr. McKee said the question before the Commission was whether an additional penalty should be assessed under 21-A M.R.S.A § 1127(1), in addition to the routine penalty of \$24.69. He said there was no question the report was late.

Mr. Wayne said the staff would recommend a penalty in the range of \$500 to \$750. The recommendation is somewhat more than the penalty assessed in the 2009 case because the late filing happened so close to the election and the amount of the independent expenditure was so significant in a House race. He also said the staff accepts that this was a good faith mistake on the part of the Republican Party.

Mr. McKee said he would look at this situation differently if the candidate had been present to discuss how the matter affected her campaign as well as to provide more information as to why the additional funds were not used.

Mr. Healy said he would support an additional penalty more in line with the 2009 case.

Mr. McKee said in that case the report was four days late thirteen days before the election. In this case, this timing was more serious because it happened closer to the election.

Mr. Youngblood said this candidate only had six days to spend the money, whereas in the 2009 case the candidate had thirteen days to spend the matching funds.

Mr. McKee said due to the timing and significant amount spent, he would support a higher penalty.

Mr. McKee moved that the Commission assess an additional penalty under 21-A M.R.S.A § 1127(1) in the amount of \$350. Mr. Youngblood seconded.

Motion passed unanimously (5-0).

Agenda Item #6. Request for Waiver of Late-Filing Penalty/Lobbyist James M. Cote

James M. Cote is the registered lobbyist for the Associated Builders and Contractors of Maine, and the President of the association. He filed a monthly lobbyist report two days late on March 17, 2011. The

preliminary penalty is \$100. In his letter requesting a waiver of the \$100 penalty, he explains that he completed the report on time, except for taking the step of clicking on the “File” button on the Commission’s website.

Ms. Matheson asked how long Mr. Cote had been a registered lobbyist and how long the electronic filing system had been in place.

Mr. Wayne said that he did not know exactly how long Mr. Cote had been a lobbyist, but it had been a few years. The electronic filing system has been in place for more than five years.

Mr. McKee moved that the Commission accept the staff recommendation and assess a penalty of \$100. Mr. Duchette seconded.

Motion passed unanimously (5-0).

Agenda Item #7. Proposed Statutory Change to Maine Clean Election Act

The Commission has submitted a campaign finance bill to the Maine Legislature for the 2011 session. Mr. Wayne explained that staff proposes one additional change to the bill concerning permissible MCEA expenditures which was payments for airfare. Mr. Wayne suggested an insertion in 21-A M.R.S.A. § 1125 which would say explicitly that Maine Clean Election Act funds may not be used for the personal gain or benefit of the candidate or for paid communications that primarily support or oppose a referendum or citizen initiative. He said this would put the prohibition of personal expenses in the statute and it would not just be in the guidelines.

Mr. Youngblood asked if these prohibitions would apply to seed money.

Mr. Wayne said no but they could be part of the proposal.

Mr. Duchette expressed concern over the ambiguity of the wording “personal gain of the candidate” since all funds are used for the goal to become elected. He questioned what “personal” meant in this context.

Mr. Wayne explained that the Guidelines would provide more detail as to what would constitute personal benefit or gain.

Mr. Healy asked whether the prohibition would apply to the candidate's spouse and dependent children.

Mr. Wayne said it did not specifically refer to the candidate's spouse and children but the candidate is still prohibited from spending MCEA funds on anything that is not campaign-related and that prohibition would cover that situation.

Mr. Wayne said this section could be removed from the proposed change all together and submitted at a later time.

Mr. McKee recommended keeping the section regarding prohibiting funds used for paid communication that primarily support or oppose a referendum or citizen initiative.

Mr. Healy asked whether the proposed change regarding personal gain would have changed the outcome of the recent issue regarding airfare purchased for a candidate's son to fly to Maine.

Mr. Wayne said he did not think so because there was a campaign-related purpose for that expenditure.

Mr. McKee said he would support the proposed change with the removal of the personal benefit or gain language and submit the remainder of the proposal.

Mr. Duchette agreed.

Mr. Youngblood questioned the acceptability of using seed money for personal purposes.

Mr. Wayne said a restriction could be added to seed money requirements. He said originally the seed money was used only for qualifying purposes and the Legislature took out that restriction so that candidates may use that seed money for any purpose, campaign-related or personal. He said candidates do only use it

for campaign-related purposes, but there could be a potential for a candidate to purchase something that benefits them personally.

Mr. Youngblood said a Clean Election candidate should not be able to use any revenues, including seed money, for personal gain.

Mr. Wayne said he could look into this for a future change and review at a later meeting.

Agenda Item #8. Audits of Maine Clean Election Act Campaigns

The Commission's auditor has completed three audits of 2010 Maine Clean Election Act candidates Paul Davis, Elizabeth Mitchell, and Anne Haskell. No exceptions (violations) were found.

Agenda Item #9. Meeting Schedule for 2011

The Commission may choose to meet every other month in a year in which a general election is not held. Mr. McKee said he would support meeting every month instead of every other month for the remainder of this calendar year. The difference is that monthly meetings would result in more but shorter meeting, while meeting every other month would result in fewer but longer meetings.

Mr. Duchette said he preferred meeting more often and have shorter meetings. He asked whether a meeting could be skipped one month if there were few items.

Mr. Wayne said that was possible and suggested Monday, May 23 as the next meeting date and then he would e-mail the Commissioners with dates for June and July.

OTHER BUSINESS

Mr. Youngblood reminded the Commission that his tenure expired on April 16 but he would remain on the Commission until a replacement has been found. He also recommended some educational meetings for potential nominees as well as sitting Commissioners.

Mr. McKee recused himself from consideration of the following agenda item and left the meeting. Ms. Matheson served as Chair for discussion of agenda item #10.

Agenda Item #10. Request for Investigation by Joseph and Michele Greenier

Joseph and Michele Greenier requested that the Commission investigate the 2010 campaign of Roger Katz. At the January meeting, the Commission found that Senator Katz inadvertently overspent his campaign funds. The Greenier's believe that the campaign received an in-kind contribution in connection with a purchase of campaign signs and requested an investigation by the Commission to gather more information around the sign purchase. At the request of Senator Katz, this matter was rescheduled from the March 31, 2011 meeting.

Mr. Wayne said that he interviewed Senator Katz, Buddy Doyle, and the owners of the print shop. He explained that after this investigation, he concluded that Buddy Doyle, who was Senator Katz campaign volunteer who purchased the signs, did not provide an in-kind contribution by paying for the signs. Mr. Wayne said he could find no evidence that Mr. Doyle intended to purchase the signs with his own personal funds without getting reimbursed by the campaign. He said because Senator Katz came forward immediately when he learned he still had an outstanding invoice, the theory that Mr. Doyle paid for or provided an in-kind contribution is not supported. The staff does not recommend finding that there was an impermissible in-kind contribution for the reasons given in the staff memo.

Ms. Matheson said the staff had done a good, thorough job on the preliminary fact finding. She said that she reviewed the materials for this agenda item carefully and found it difficult to understand what the complainant was alleging as a new violation. She said the Commission considered the facts in this case and found Senator Katz in violation and assessed a penalty. She asked that any comments made today be specific to any new information with regard to this new allegation.

Joseph Greenier, concerned citizen from Stockton Springs, said he was submitting his findings under the protection of the Whistle Blowers Act and the Americans with Disability Act. He said the Ethics Commission has not provided all the records requested under the Freedom of Information Act (FOIA). He said this case goes against our religious convictions.

Mr. Duchette asked Mr. Greenier if he was making a complaint under FOIA because he had not received all information from the Ethics Commission.

Mr. Greenier said he had to come to the Ethics Commission office several times to get all the information he wanted.

Mr. Wayne said everything Mr. Greenier asked for has been provided and the staff has not withheld any information from him.

Ms. Matheson asked Mr. Greenier if there was a new allegation or violation that he could present to the Commission.

Mr. Greenier said his issue was his objection to the penalty given to Senator Katz at the January 27 meeting regarding his overspending Clean Election funds. He said this case has been judged wrongly and there were several violations within this campaign. He claimed the Maine Screen Printing (MSP) invoice for signs referred to a monthly service charge but since it was not charged to the Katz campaign, it was an in-kind contribution. In addition, the invoice was not made out to Mr. Doyle. Another allegation of violation was that the report of the expenditure for signs from MSP was late because the signs were ordered in May but the campaign reported that the expenditure was made in July and, in fact, the expenditure was made in June. He said this expenditure should have been reported as an unpaid debt. He claimed that the vendor usually starts calling when an invoice has not been paid, and the campaign should have known in October about this invoice. He also expressed concern over the amount of time that had passed from the time the signs were order and the time the signs were paid for. He said the invoice was not paid until January 11, 2011 so therefore interest should have been charged as well.

Mr. Duchette, summarizing Mr. Greenier's testimony, said he understood that Mr. Greenier claimed that despite Senator Katz's testimony and the staff's investigation, some time in September the signs were ordered and the campaign knew about the outstanding debt but just did not appropriately report it in the correct report until after the election. Also, the invoice was not paid until January 11, 2011, which made it a violation of Clean Election law.

Mr. Greenier agreed with Mr. Duchette's summary and said that the campaign was in violation from the beginning because Senator Katz was his own treasurer.

Mr. Duchette asked if Mr. Greenier's complaint was because the candidate was acting as treasurer in violation of the Act or that there was false reporting based on when the signs were reported.

Mr. Greenier said they were alleging both complaints. He said he wants the Commission to reconsider the actions taken at the January 27 meeting with regard to Senator Katz's violation of the Clean Election law because this case was not investigated at that time. He said what he found during his investigation of this matter was that it was more than a lost invoice. He said the issue of the lost invoice was a symptom of a greater problem with this campaign, which was its refusal to report accurately. He said his findings submitted to the Commission were audit-like and he requested the Commission staff perform its own audit and then make a decision. He said he would like this Commission to protect the Clean Elections Act.

Mr. Healy asked if Mr. Greenier had any evidence to support his claim that Mr. Doyle's name was on the invoice.

Mr. Greenier said he did have that evidence at home.

Mr. Duchette expressed concern that Mr. Greenier was not prepared with critical evidence that he claims he has.

Mr. Healy asked Mr. Greenier if he had an invoice from Modern Screen Print that said "sold to Buddy Doyle."

Mr. Greenier said he did not have such an invoice. He also expressed concern over the travel costs associated with picking up the signs which was not reported either.

Mr. Wayne said after listening carefully to Mr. Greenier, he did not believe there was any new information to support further investigation or audit.

Senator Roger Katz, of Augusta, said he listened carefully to Mr. Greenier as well and agreed there was a violation made. He stated that he was sorry and embarrassed about what happened and self reported the mistake. He said he was not clear what Mr. Greenier was suggesting but he did not falsify any documents.

Ms. Matheson said as a result of Mr. Greenier's explanation, the Commission has a better sense of what his complaint was. Since the last time this matter was addressed, she said the staff has done further investigation by speaking with the parties involved.

Ms. Matheson moved to accept the staff recommendation that no further action be taken. Mr. Youngblood seconded.

Motion passed unanimously (4-0).

Mr. Duchette moved to adjourn and Mr. Youngblood seconded the motion.

Meeting adjourned at 12:05 p.m.

Respectfully submitted,

Jonathan Wayne, Executive Director